

Alisha Holland

From: Patrick Jaugstetter <patrickj@jarrard-davis.com>
Sent: Friday, August 5, 2022 4:44 PM
To: Alisha Holland
Cc: Karen Pachuta; Khoury, Alex; Shawn Marie Marie Story; West, Hartley; Steiner, Neil; Matletha Bennette; Poy Winichakul; Turret, Sharon; Ezra Rosenberg; Julie Houk; kurt@kastorflaw.com; Jack Genberg; Pamela Wright; Frank Strickland; Bryan Tyson; GA-Redistricting; Bryan Jacoutot; cmcgowan@law.ga.gov; Loree Anne Paradise; Canter, Jacob
Subject: Re: Georgia State Conference of the NAACP v State of Georgia, 21 Civ. 5338-ELB-SCJ-SDG | Notice of Discovery Dispute

CAUTION - EXTERNAL:

Ms. Holland:

Pursuant to the Court's instructions, the following is a brief summary of the position of the Non-Party Witnesses with respect to the pending discovery dispute:

The Georgia NAACP Plaintiffs are seeking document discovery from and depositions of (the "Discovery Requests") State Senator John F. Kennedy; State Representative Bonnie Rich; Gina Wright, Executive Director of the Legislative and Congressional Reapportionment Office of the Georgia General Assembly; the House Legislative and Reapportionment Committee (through its current Chair, Representative Houston Gaines); and the Senate Legislative and Reapportionment Committee (through its current Chair, Senator John F. Kennedy) (collectively, the "Non-Party Witnesses").

The Non-Party Witnesses have objected to the Discovery Requests on the basis of undue burden and on the basis of legislative immunity and legislative privilege. The Non-Party Witnesses have begun production of non-privileged documents to the Georgia NAACP Plaintiffs. However, a dispute remains as to the application of legislative immunity and privilege to the Discovery Requests.

The Discovery Requests seek to compel the Non-Party Witnesses to produce documents and give testimony as to the legislative process, including, without limitation: communications among and between legislators; communications among and between legislators and staff; communications among and between legislators and constituents; matters considered, reviewed, or consulted by legislators in the formulation of the challenged maps; and other matters that may have influenced legislators to introduce, sponsor, support, or vote in favor or against the challenged maps.

It is the Non-Party Witnesses' position that all of these matters are protected by the common-law doctrine of legislative immunity and legislative privilege and, as such, the Non-Party Witnesses may not be compelled to produce such records or appear for deposition. Specifically, it is the Non-Party Witnesses' position that such legislative immunity and legislative privilege are absolute and available in cases involving federal claims arising out of or inquiring into their legislative acts. *See Tenney v. Brandhove*, 341 U.S. 367, 376 (1951); *In Re Hubbard*, 803 F. 3d. 1298, 1311-1312 (11th Cir. 2015); *Scott v. Taylor*, 405 F.3d 1251, 1257 (11th Cir. 2005).

The Georgia NAACP Plaintiffs have proposed that the Non-Party Witnesses sit for an unlimited deposition, assert objections to those questions that the witnesses believe encroach upon legislative immunity and legislative privilege, and provide answers, subject to such objections. Under this proposed approach, those specific objections would then be presented to the Court for evaluation and determination of the applicability of legislative immunity and legislative privilege. The Non-Party Witnesses suggest that such an approach is inconsistent with and contrary to the very purpose of legislative immunity and legislative privilege. *United States v. Swindall*, 971 F.2d 1531 (11th Cir. 1992) (“When a member is improperly questioned, however, the violation occurs automatically. ‘It is the very act of questioning that triggers the protection of the Speech or Debate Clause.’ *In re Grand Jury (Intervenor “A”)*, 587 F.2d 589, 598 (3d Cir.1978).”)

To ensure the Non-Party Witnesses receive the protection afforded by the doctrines of legislative immunity and legislative privilege, the Court must consider the issues and determine the applicability and scope of these doctrines prior to any taking of depositions.

The Non-Party Witnesses submit that the application of legislative immunity and legislative privilege in a state redistricting matter is of such importance that the Court would benefit from a full briefing and an opportunity to hear oral arguments from the parties. The Non-Party Witnesses stand ready to file such a brief at the Court’s direction.

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From: Alisha Holland <Alisha_Holland@gand.uscourts.gov>

Date: Friday, August 5, 2022 at 2:59 PM

To: Bryan Tyson <btyson@taylorenghish.com>, Bryan Jacoutot <bjacoutot@taylorenghish.com>, cmcgowan@law.ga.gov <cmcgowan@law.ga.gov>, Loree Anne Paradise <lparadise@taylorenghish.com>, Frank Strickland <fstrickland@taylorenghish.com>

Cc: GA-Redistricting <GA_Redistricting@crowell.com>, Karen Pachuta <kpachuta@jarrard-davis.com>, Khoury, Alex <akhoury@sgrlaw.com>, Shawn Marie Marie Story <Shawn.Story@legis.ga.gov>, West, Hartley <Hartley.West@dechert.com>, Steiner, Neil <neil.steiner@dechert.com>, Matletha Bennette <matletha.bennette@splcenter.org>, Poy Winichakul <poy.Winichakul@splcenter.org>, Turret, Sharon

<Sharon.Turret@dechert.com>, Ezra Rosenberg <erosenberg@lawyerscommittee.org>, Julie Houk <jhouk@lawyerscommittee.org>, kurt@kastorflaw.com <kurt@kastorflaw.com>, Jack Genberg <jack.genberg@splcenter.org>, Canter, Jacob <JCanter@crowell.com>, Patrick Jaugstetter <patrickj@jarrard-davis.com>, Pamela Wright <Pamela_Wright@gand.uscourts.gov>
Subject: RE: Georgia State Conference of the NAACP v State of Georgia, 21 Civ. 5338-ELB-SCJ-SDG | Notice of Discovery Dispute

Great, thank you. We will schedule the teleconference for Tuesday, August 9 at 11:00 a.m. The connection instructions are below.

Dial by your location
+1 669 254 5252 US (San Jose)
+1 646 828 7666 US (New York)
Meeting ID: 160 152 9560
Passcode: 448857

Thanks,

Alisha Holland
Courtroom Deputy Clerk to the
Honorable Steven D. Grimberg
1701 United States Courthouse
75 Ted Turner Drive, S.W.
Atlanta, GA 30303
Phone: (404) 215-1474
Alisha_Holland@gand.uscourts.gov

From: Bryan Tyson <btyson@taylorenghish.com>
Sent: Friday, August 5, 2022 2:46 PM
To: Alisha Holland <Alisha_Holland@gand.uscourts.gov>; Bryan Jacoutot <bjacoutot@taylorenghish.com>; cmcgowan@law.ga.gov; Loree Anne Paradise <lparadise@taylorenghish.com>; Frank Strickland <fstrickland@taylorenghish.com>
Cc: GA-Redistricting <GA_Redistricting@crowell.com>; Karen Pachuta <kpachuta@jarrard-davis.com>; Khoury, Alex <akhoury@sgrlaw.com>; Shawn Marie Marie Story <Shawn.Story@legis.ga.gov>; West, Hartley <Hartley.West@dechert.com>; Steiner, Neil <neil.steiner@dechert.com>; Matletha Bennette <matletha.bennette@splcenter.org>; Poy Winichakul <poy.Winichakul@splcenter.org>; Turret, Sharon <Sharon.Turret@dechert.com>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Julie Houk <jhouk@lawyerscommittee.org>; kurt@kastorflaw.com; Jack Genberg <jack.genberg@splcenter.org>; Canter, Jacob <JCanter@crowell.com>; Patrick Jaugstetter <patrickj@jarrard-davis.com>; Pamela Wright <Pamela_Wright@gand.uscourts.gov>
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CAUTION - EXTERNAL:

Thank you, Ms. Holland and hope you are also well.

We will likely also seek some discovery from the legislature, so we would like to participate on behalf of the State Defendants. We are available on August 9 at 11:00am and appreciate you reaching out.

Thanks,

Bryan



Bryan P. Tyson

Taylor English Duma LLP | 1600 Parkwood Circle, Suite 200, Atlanta, GA 30339

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From: Alisha Holland <Alisha.Holland@gand.uscourts.gov>

Sent: Friday, August 5, 2022 2:42 PM

To: Bryan Jacoutot <bjacoutot@taylorenghish.com>; Bryan Tyson <btyson@taylorenghish.com>; cmcgowan@law.ga.gov; Loree Anne Paradise <lp Paradise@taylorenghish.com>; Frank Strickland <fstrickland@taylorenghish.com>

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Subject: RE: Georgia State Conference of the NAACP v State of Georgia, 21 Civ. 5338-ELB-SCJ-SDG | Notice of Discovery Dispute

Good Afternoon,

Hope everyone is doing well.

Mr. Tyson and/or co-counsel, please let me know if you all wish to participate on the teleconference regarding the below dispute. If so, please let me know if August 9 at 11:00 a.m. also work for you all.

Thanks,

Alisha Holland
Courtroom Deputy Clerk to the
Honorable Steven D. Grimberg

1701 United States Courthouse
75 Ted Turner Drive, S.W.
Atlanta, GA 30303
Phone: (404) 215-1474
Alisha.Holland@gand.uscourts.gov

From: Jack Genberg <jack.genberg@splcenter.org>

Sent: Thursday, August 4, 2022 11:09 AM

To: Canter, Jacob <JCanter@crowell.com>; Patrick Jaugstetter <patrickj@jarrard-davis.com>; Alisha Holland <Alisha.Holland@gand.uscourts.gov>; Pamela Wright <Pamela.Wright@gand.uscourts.gov>

Cc: GA-Redistricting <GA.Redistricting@crowell.com>; Karen Pachuta <kpachuta@jarrard-davis.com>; Khoury, Alex <akhoury@sgrlaw.com>; Shawn Marie Marie Story <Shawn.Story@legis.ga.gov>; West, Hartley <Hartley.West@dechert.com>; Steiner, Neil <neil.steiner@dechert.com>; Matletha Bennette <matletha.bennette@splcenter.org>; Poy Winichakul <poy.winichakul@splcenter.org>; Turret, Sharon <Sharon.Turret@dechert.com>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Julie Houk <jhouk@lawyerscommittee.org>; kurt@kastorflaw.com

Subject: RE: Georgia State Conference of the NAACP v State of Georgia, 21 Civ. 5338-ELB-SCJ-SDG | Notice of Discovery Dispute

CAUTION - EXTERNAL:

On behalf of the Common Cause Plaintiffs, Hartley West and I can be available August 9 at 11:00 a.m. I can also be available on August 8 or 12.



Jack Genberg he/him/his
Senior Staff Attorney | Voting Rights
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Admitted in Georgia and New York

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From: Canter, Jacob <JCanter@crowell.com>

Sent: Wednesday, August 3, 2022 6:58 PM

To: Patrick Jaugstetter <patrickj@jarrard-davis.com>; Alisha Holland <Alisha.Holland@gand.uscourts.gov>; Pamela Wright <Pamela.Wright@gand.uscourts.gov>

Cc: GA-Redistricting <GA.Redistricting@crowell.com>; Karen Pachuta <kpachuta@jarrard-davis.com>; Khoury, Alex <akhoury@sgrlaw.com>; Shawn Marie Marie Story <Shawn.Story@legis.ga.gov>; West, Hartley <Hartley.West@dechert.com>; Steiner, Neil <neil.steiner@dechert.com>; Jack Genberg <jack.genberg@splcenter.org>; Matletha Bennette <matletha.bennette@splcenter.org>; Poy Winichakul <poy.winichakul@splcenter.org>; Turret, Sharon <Sharon.Turret@dechert.com>; Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Julie Houk <jhouk@lawyerscommittee.org>; kurt@kastorflaw.com

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On behalf of the Georgia NAACP Plaintiffs, Raija Horstman and I can also be available on August 9 at 11:00 AM ET. We can also be available on either August 8 or 12.

Jacob Canter

Pronouns: he/him/his

Crowell & Moring LLP

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From: Patrick Jaugstetter <patrickj@jarrard-davis.com>

Sent: Wednesday, August 3, 2022 1:16 PM

To: Alisha Holland <Alisha_Holland@gand.uscourts.gov>; Canter, Jacob <JCanter@crowell.com>; Pamela Wright <Pamela_Wright@gand.uscourts.gov>

Cc: GA-Redistricting <GA_Redistricting@crowell.com>; Karen Pachuta <kpachuta@jarrard-davis.com>; Khoury, Alex <akhoury@sgrlaw.com>; Shawn Marie Marie Story <Shawn.Story@legis.ga.gov>; West, Hartley <Hartley.West@dechert.com>; Steiner, Neil <neil.steiner@dechert.com>; jack.genberg@splcenter.org; Matletha Bennette <matletha.bennette@splcenter.org>; poy.winichakul@splcenter.org; Turret, Sharon <Sharon.Turret@dechert.com>; EXT_Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Julie Houk <jhouk@lawyerscommittee.org>; kurt@kastorflaw.com

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External Email

On behalf of the non-party witnesses, I am unavailable on either August 8 or August 12. I can be available on August 9 at either 11:00 or 3:30 pm.

Patrick D. Jaugstetter

Partner

Jarrard & Davis, LLP

222 Webb Street

Cumming, GA 30040

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From: Alisha Holland <Alisha_Holland@gand.uscourts.gov>

Sent: Wednesday, August 3, 2022 3:21:15 PM

To: Canter, Jacob <JCanter@crowell.com>; Pamela Wright <Pamela_Wright@gand.uscourts.gov>

Cc: GA-Redistricting <GA_Redistricting@crowell.com>; Patrick Jaugstetter <patrickj@jarrard-davis.com>; Karen Pachuta <kpachuta@jarrard-davis.com>; Khoury, Alex <akhoury@sgrlaw.com>; Shawn Marie Marie Story

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EXT_Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Julie Houk <jhouk@lawyerscommittee.org>;
kurt@kastorflaw.com <kurt@kastorflaw.com>

Subject: RE: Georgia State Conference of the NAACP v State of Georgia, 21 Civ. 5338-ELB-SCJ-SDG | Notice of Discovery Dispute

Good Afternoon,

I hope everyone is doing well. Judge Grimberg will be handling this dispute on behalf of the Court. He would like both sides to provide a short summary of your perspective positions by Friday, August 5 via email to me. Additionally, please let me know if any of the below dates and times will work for a teleconference regarding this dispute:

August 8 at 11:00 a.m. or 1:00 p.m.

August 9 at 11:00 a.m. or 3:30 p.m.

August 12 at 11:00 a.m.

Thanks,

Alisha Holland
Courtroom Deputy Clerk to the
Honorable Steven D. Grimberg
1701 United States Courthouse
75 Ted Turner Drive, S.W.
Atlanta, GA 30303
Phone: (404) 215-1474
Alisha.Holland@gand.uscourts.gov

From: Canter, Jacob <JCanter@crowell.com>

Sent: Tuesday, August 2, 2022 1:04 PM

To: Pamela Wright <Pamela.Wright@gand.uscourts.gov>; Alisha Holland <Alisha.Holland@gand.uscourts.gov>

Cc: GA-Redistricting <GA.Redistricting@crowell.com>; Patrick Jaugstetter <patrickj@jarrard-davis.com>; Karen Pachuta <kpachuta@jarrard-davis.com>; Khoury, Alex <akhoury@sgrlaw.com>; Shawn Marie Marie Story

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Turret, Sharon <Sharon.Turret@dechert.com>; EXT_Ezra Rosenberg <erosenberg@lawyerscommittee.org>; Julie Houk
<jhouk@lawyerscommittee.org>; kurt@kastorflaw.com

Subject: Georgia State Conference of the NAACP v State of Georgia, 21 Civ. 5338-ELB-SCJ-SDG | Notice of Discovery Dispute

CAUTION - EXTERNAL:

Ms. Wright and Ms. Holland,

I am writing on behalf of Plaintiffs Georgia State Conference of the NAACP, Georgia Coalition for the People's Agenda, Inc., and Galeo Latino Community Development Fund, Inc. (collectively, the "Georgia NAACP Plaintiffs"). I am writing in regards to a discovery dispute with third parties Representative Bonnie Rich, Senator John Kennedy, the Senate Redistricting & Reapportionment Committee, the House Legislative and Congressional Reapportionment Committee, Gina Wright, and the Legislative and Congressional Reapportionment Office (collectively, the "Legislature Parties"). The co-Plaintiffs Common Cause, League of Women Voters of Georgia, Dr. Ursula Thomas, Jasmine Bowles, and Dr. H. Benjamin Williams (the "Common Cause Plaintiffs") are not parties to this discovery dispute. However, because this dispute impacts the ability for the Common Cause Plaintiffs to complete discovery, counsel for the Common Cause Plaintiffs are cc'd to this email as well. We have not been able to locate contact information for the Chambers of Judge Branch, though we would appreciate you notifying Judge Branch's chambers about this email as well.

The Georgia NAACP Plaintiffs and Legislature Parties disagree on the scope of the legislative privilege and require court intervention to determine how to proceed with document discovery and depositions. The Georgia NAACP Plaintiffs proposed a solution based on the approach endorsed by the Fifth Circuit in *League of United Latin American Citizens, et al. v. Abbott*, 2022 WL 2713263 (5th Cir. May 20, 2022). The Legislature Parties do not accept this approach and have proposed a different solution. The parties, with counsel for all parties present, have engaged in good faith efforts to resolve the dispute, but agree that resolution without court intervention is not possible.

We have contacted chambers regarding this dispute pursuant to Section III.f of Judge Grinberg's standing order and Section III.E of Judge Jones' standing order. The Georgia NAACP Plaintiffs believe this is a critical discovery issue that needs to be resolved in order for the case to move expeditiously forward. We appreciate your guidance on how best to proceed.

Jacob Canter

Pronouns: he/him/his

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